

AO 91 (Rev. 5/85) Criminal Complaint

United States District Court

NORTHERN DISTRICT OF **CALIFORNIA**

FILED

JUL 20 2006

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

v.

GREGORY L. REYES and
STEPHANIE JENSEN

CRIMINAL COMPLAINT

CASE NUMBER:

(Name and Address of Defendant)

3 06 70450

EMC

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about 2000-2004 in Santa Clara county, in the Northern District of California defendant(s) did, (Track Statutory Language of Offense)

See Exhibit 1 to the Affidavit in Support of Complaint by FBI Special Agent Joseph Schadler (which is attached hereto and incorporated herein by reference).

in violation of Title 15 United States Code, Section(s) 78j(b) and 78ff

I further state that I am a(n) FBI Special Agent and that this complaint is based on the following facts:
Official Title

See Affidavit in Support of Complaint by FBI Special Agent Joseph Schadler (which is attached hereto and incorporated herein by reference).

Continued on the attached sheet and made a part hereof:

☒ Yes☐ No

Approved
As To
Form:

AUSA: Christopher Steskal

Name/Signature of Complainant:

Joseph Schadler

Sworn to before me and subscribed in my presence,

Date

7/20/06
Edward M. Chen
United States Magistrate Judge

Name & Title of Judicial Officer

at

City and State

Signature of Judicial Officer

AFFIDAVIT IN SUPPORT OF COMPLAINT

I, Joseph Schadler, a Special Agent with the Federal Bureau of Investigation, being duly sworn, state as follows:

I. INTRODUCTION AND PURPOSE OF AFFIDAVIT.

1. I have been employed as a Special Agent of the Federal Bureau of Investigation for over seven years, and I am currently assigned to a white collar crime squad in the San Francisco division. I have participated in investigations regarding securities fraud, health care fraud, insurance fraud, internet fraud, and environmental crimes, and have received training and instruction in the conduct of such investigations. I am authorized to investigate violations of laws of the United States, and I am authorized to execute warrants and complaints issued under the authority of the United States.

2. I make this affidavit in support of a criminal complaint against GREGORY L. REYES and STEPHANIE JENSEN. As set forth below, there is probable cause to conclude that beginning in or about 2000, and continuing up to in or about 2004, in the Northern District of California and elsewhere, the defendants GREGORY L. REYES and STEPHANIE JENSEN did knowingly and willfully, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities issued by Brocade Communications Systems, Inc. ("Brocade"), in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud as to a material matter; (b) making and causing Brocade to make untrue statements of material fact and omitting to state facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon purchasers of Brocade securities, all in violation of Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

1 II. BASIS FOR KNOWLEDGE.

2 3. In approximately January 2005, attorneys representing the Audit Committee for the
3 Board of Directors of Brocade disclosed to me and others that they had conducted an internal
4 investigation relating to the possible backdating of stock option grants at the company. Following the
5 disclosures by the Audit Committee, I and others interviewed numerous witnesses familiar with
6 Brocade's stock option granting practices. I have also reviewed numerous documents relating to
7 Brocade's stock option granting practices and Brocade's public filings. In addition, I have spoken
8 with Brocade's outside auditor and other witnesses familiar with the accounting principles described
9 below.

10 4. The facts sets forth herein are not meant to be inclusive of all information gathered by
11 me in connection with the investigation described below. Rather, these facts are meant to provide
12 information sufficient for the purpose of this affidavit. I have set forth those facts that I deem
13 necessary to establish probable cause to believe that the above-mentioned violation has been
14 committed.

15 III. STATEMENT OF PROBABLE CAUSE.

16 5. At all times relevant to this Complaint, the following facts are true to the best of my
17 knowledge and belief:

18 A. Introduction.

19 6. As described in more detail below, beginning in or about 2000 and continuing to in or
20 about 2004, within the Northern District of California, and elsewhere, the defendants GREGORY L.
21 REYES, STEPHANIE JENSEN, and others knowingly and intentionally devised, and intended to
22 devise, a scheme and artifice to defraud Brocade, its Board, its shareholders, its auditors, the public,
23 and the SEC as to a material matter. It was part of the scheme and artifice to defraud that REYES,
24 JENSEN, and others, directly and indirectly:

25 a. backdated Committee meeting minutes of the Board of Directors and similar
26 documents so that it appeared that the Committee met and stock options were granted and priced at
27 the market value of Brocade's stock on dates when the value of Brocade's stock was relatively low,
28 when in fact no such meetings occurred and the options were not granted on those dates; and

b. backdated employment offer letters and other personnel records for certain

1 employees so that those employees could be placed on stock option grants that were purportedly
2 made and priced when the market value of Brocade's stock was relatively low and so that it appeared
3 that those employees were actually employed by Brocade on the grant dates, when in fact they were
4 not; and

5 c. made and caused to be made fraudulent entries into Brocade's financial books
6 and records.

7 d. made and caused to be made materially false and misleading statements and
8 material omissions to outside auditors; and

9 e. filed and caused to be filed materially false and misleading financial
10 statements with the SEC.

11 7. As described in more detail below, the object and purpose of the scheme to defraud
12 was to grant Brocade employees valuable in-the-money stock options while hiding the true nature and
13 value of the stock option grants from Brocade, its Board, its shareholders, its auditors, the public, and
14 the SEC and while avoiding the recognition of a compensation expense in Brocade's financial
15 statements.

16 B. The Company.

17 8. Brocade was a Delaware corporation with its headquarters in San Jose, California.
18 Brocade developed, marketed, sold, and supported data storage networking products and services.

19 9. Brocade was a publicly held corporation whose shares were registered with and traded
20 under the symbol "BRCD" on the National Association of Securities Dealers Automated Quotation
21 system ("NASDAQ"), a national securities exchange that uses the means and instrumentalities of
22 interstate commerce and the mails.

23 10. As a public company, Brocade was required to comply with regulations of the United
24 States Securities and Exchange Commission (the "SEC"). Those regulations are designed to protect
25 members of the investing public by, among other things, ensuring that a company's financial
26 information is accurately recorded and disclosed to the public.

27 11. Under SEC regulations, Brocade and its officers also had a duty to: (a) make and
28 keep books, records and accounts that fairly and accurately reflected the company's business

1 transactions; (b) devise and maintain a system of internal accounting controls sufficient to provide
2 reasonable assurances that the company's transactions were recorded as necessary to permit
3 preparation of reliable financial statements; and (c) file quarterly reports (on Form 10-Q) and annual
4 reports (on Form 10-K) with the SEC. Brocade's Form 10-K included audited financial statements,
5 which reflected any charges associated with compensating employees.

6 12. Between May 1999 and June 2002, Arthur Andersen LLP, a public accounting firm,
7 acted as the outside auditors of Brocade's financial statements. Between June 2002 and the present,
8 KPMG LLP, a public accounting firm, acted as the outside auditors of Brocade's financial
9 statements.

10 13. Brocade's fiscal year ended on the last Saturday in the month of October.

11 C. The Defendants.

12 14. REYES served as Chief Executive Officer ("CEO") of Brocade from July 1998 until
13 January 2005. REYES was also President and a member of Brocade's Board of Directors from July
14 1998 to May 2001. From May 2001 until January 2005, REYES served as Chairman of the Board of
15 Directors of Brocade. From January 2005 to July 2005, REYES continued as a member of the Board
16 of Directors of Brocade and acted as a consultant to the company. He left the company in July 2005.

17 15. JENSEN served as Vice President of Human Resources ("HR") for Brocade from
18 October 1999 until February 2004. Beginning in 2000, JENSEN reported directly to REYES.
19 JENSEN worked as a consultant to Brocade from February 2004 until August 2004, when she retired
20 from Brocade.

21 D. Brocade's Purported Stock Option Granting Practices And Procedures.

22 16. Beginning in May 1999, Brocade became a public company and its business quickly
23 experienced substantial growth. Like other technology companies in Silicon Valley, Brocade faced
24 significant competition to hire and retain qualified personnel. Brocade's management believed that
25 Brocade's success depended in part on Brocade's ability to hire and retain qualified personnel.

26 17. Brocade used stock options to recruit and retain qualified personnel. Those stock
27 options gave employees the right to purchase Brocade stock in the future at a set exercise or "strike"
28 price. Through stock options, Brocade's management and Board hoped to create an incentive for

1 Brocade's employees to contribute to Brocade's success by sharing in the potential future appreciation
2 of Brocade's stock.

3 18. As CEO and a member of Brocade's Board, REYES was granted sole authority from
4 Brocade's Board to grant stock options to all Brocade employees except for certain officers and
5 directors. As such, REYES was the Compensation Committee for the Board of Directors – in effect,
6 a “committee of one” – for purposes of granting stock options to such employees.

7 E. Relevant Accounting Rules And Brocade's Public Disclosures.

8 19. As a matter of practice, Brocade did not record any compensation expenses in its
9 publicly filed financial statements for the millions of stock options it granted to employees because it
10 purported to grant the options at a price equal to the market price of Brocade's stock on the dates of
11 the grants and because it claimed that the recipients of the stock options were employees on the dates
12 of the grants.

13 20. Brocade's public filings represented that Brocade accounted for its stock option grants
14 in accordance with generally accepted accounting principles (“GAAP”), including Accounting
15 Principles Board Opinion No. 25, “Accounting for Stock Issued to Employees” (“APB 25”). Under
16 GAAP, a company was not required to record any compensation expenses for an employee stock
17 option grant where, among other things, the exercise price of the grant was equal to the market price
18 of the company's stock on the date of the grant. Such stock option grants are “at-the-money” because
19 they have no intrinsic value on the date of the grant. In contrast, a company was required to record a
20 compensation expense for a stock option grant where the exercise price of the grant was less than the
21 market price of the company's stock on the date of the grant. Such stock option grants are “in-the-
22 money” because they have intrinsic value on the date of the grant. In addition, under GAAP, a
23 company that granted stock options to a non-employee was required to recognize a compensation
24 expense. Likewise, a company was required to recognize a compensation expense if it cancelled an
25 existing stock option grant and reissued the stock options to an employee at a more favorable price.

26 21. In Brocade's Forms 10-K for its fiscal years 2000, 2001, 2002, and 2003, signed by
27 REYES, Brocade stated that it followed GAAP, including APB 25 whereby the difference between
28 the exercise price and the fair market value at the date of grant is recognized as compensation

1 expense. Except in a few minor instances, Brocade did not disclose any compensation expenses in
2 connection with its stock option grants in its SEC filings.

3 F. Brocade's Purported Stock Option Granting Process.

4 22. According to an August 2000 e-mail circulated by JENSEN and other documents,
5 JENSEN and REYES purported to adhere to the following procedures and practices (among others)
6 when REYES exercised his delegated authority to grant stock options to new hires: (1) stock options
7 would only be granted to a person once his or her employment at Brocade actually commenced,
8 whether in a full-time or part-time capacity; (2) the stock option grant would be subject to Committee
9 approval of the Board of Directors, that is, approval by REYES acting on behalf of the Compensation
10 Committee; (3) the exercise price of the stock options would be set on the date the Committee met;
11 and (4) the exercise price of the stock options would be equal to the market value of Brocade's stock
12 on the grant date, that is, the date the Committee met and approved the stock options.

13 G. Brocade's Actual Stock Option Granting Process.

14 23. According to witnesses who worked within Brocade's HR department, Brocade did
15 not actually follow the above described process. Rather, REYES and JENSEN often waited until the
16 end of the fiscal quarter before granting the stock options. JENSEN's staff routinely printed out the
17 historical closing prices for Brocade's stock and highlighted the low dates during the quarter. They
18 provided the historical pricing information to JENSEN with a draft of the Committee meeting
19 minutes approving stock option grants for the employees who were eligible for grants. JENSEN or
20 her staff gave the historical pricing information to REYES with the meeting minutes. REYES
21 routinely signed the meeting minutes and dated the minutes as if the meetings occurred on the
22 highlighted low dates and the stock options were priced at the market value of Brocade's stock on
23 those dates.

24 24. By June 2003, the above described practice for pricing stock option grants had
25 become so routine that an HR employee prepared a memorandum describing the practice. The
26 memorandum explicitly directs the HR employees to recommend a pricing date by printing out
27 historical closing prices for Brocade's stock and identifying the closing price that is the lowest since
28 the last pricing date. This memorandum was shared by lower level HR employees who helped

1 implement the process. The above-described process continued into 2004.

2 25. The following are examples of stock option grants where REYES and JENSEN
3 backdated the Committee meeting minutes of the Board of Directors to make the minutes appear as if
4 the stock options were granted at the market value of Brocade's stock on the date of the grant when in
5 fact they were not. The following is based upon my review of e-mails and the witness interviews that
6 I have conducted.

7 a. In January 2002, which was near the close of Brocade's first quarter for 2002,
8 REYES and JENSEN backdated the Committee meeting minutes approving a stock option grant to
9 October 30, 2001 when Brocade's stock closed at \$24.20, which was the lowest price for Brocade's
10 stock during the first quarter of 2002. That grant included some employees who did not interview for
11 a position at Brocade until January 2002. REYES and JENSEN then backdated the Committee
12 meeting minutes approving another grant to November 28, 2001 so that employees hired between
13 October 30, 2001 and November 28, 2001 could receive a stock option price of \$28.82, which was
14 the lowest closing price for Brocade's stock between October 30 and November 28. REYES and
15 JENSEN also backdated the Committee meeting minutes approving yet another grant to January 22,
16 2002 so that employees hired between November 28, 2001 and January 22, 2002 could receive a
17 stock option price of \$31.76.

18 b. On or about March 13, 2002 or later, and during Brocade's second quarter for
19 2002, REYES and JENSEN decided to price another stock option grant. After that day, REYES and
20 JENSEN caused to be prepared Committee meeting minutes approving the stock option grant. They
21 backdated the Committee meeting minutes to February 28, 2002. On that day, Brocade's stock closed
22 at \$21.97, which was the lowest price for Brocade's stock during the second quarter of 2002.

23 26. JENSEN told HR employees who reported to her that they should not discuss stock
24 option grants using e-mail.

25 27. When interviewed by the attorneys representing Brocade's Audit Committee at the
26 end of 2004, JENSEN stated that she was personally involved with REYES's stock pricing decisions
27 approximately ninety percent of the time. She said that she would sit down with REYES with a chart
28 showing historical closing prices for Brocade's stock. She would identify for REYES the date when

1 Brocade's stock closed at a low price. REYES then priced the stock options as if the Committee met
2 on the low date. JENSEN stated that she cautioned REYES not to always pick the low dates because
3 it looked suspicious.

4 H. The Backdated Employment Offer Letters.

5 28. The documentary evidence and witness statements also indicate that REYES and
6 JENSEN caused employment offer letters and similar records to be backdated so that certain
7 employees could be placed on earlier stock option grants that were purportedly made and priced when
8 the market value of Brocade's stock was relatively low and so that it appeared that those employees
9 were actually employed by Brocade on the dates of the grants.

10 29. The following is an example of one such occurrence. The documents and witness
11 statements show that at the end of January 2002, Employee One was recruited by Brocade to a high
12 level sales position. On February 1, 2002, REYES interviewed Employee One. After the interview,
13 REYES approved the hiring of Employee One. REYES directed JENSEN and her staff to price
14 Employee One's stock options based on the value of Brocade's stock in the first quarter of 2002,
15 which was below \$30.00 per share. At the time that Employee One was offered employment at
16 Brocade in February 2002, Brocade's stock was trading for over \$30 a share.

17 30. JENSEN falsified hiring documents so that Employee One could receive stock
18 options priced as if they were granted in Brocade's first quarter of 2002. JENSEN caused Employee
19 One's offer letter to be backdated so that it was dated November 28, 2001. The letter offered
20 Employee One a stock option grant of 285,000 shares of Brocade stock subject to Committee
21 approval and provided that the exercise price would be the fair market value of Brocade's stock on the
22 date of the grant. Employee One was directed by JENSEN's staff to sign the offer letter and date his
23 signature so that it appeared that he was employed as of November 28, 2001. In fact, Employee One
24 did not receive an offer of employment or accept such an offer until February 2002.

25 31. After Employee One accepted employment in February 2002 and signed the
26 backdated November 28, 2001 offer letter, REYES and JENSEN prepared Committee meeting
27 minutes for the Board of Directors dated November 28, 2001 that included the stock option grant of
28 285,000 shares to Employee One. The Committee meeting minutes priced the stock option grant

1 using the closing price of Brocade's stock on November 28, 2001, which was \$28.82 a share.

2 REYES then signed the backdated Committee meeting minutes approving the grant.

3 32. At the end of March 2002, Employee One threatened to leave Brocade and accept an
4 employment offer at a competitor of Brocade. REYES personally intervened and renegotiated the
5 terms of Employee One's employment at Brocade. Employee One agreed to remain at Brocade based
6 upon the renegotiated terms.

7 33. After Employee One agreed to remain at Brocade, JENSEN prepared a new offer
8 letter for Employee One that described a new stock option grant of 500,000 shares and a new loan for
9 up to \$1,211,000 and dated the offer letter January 28, 2002 when in truth the new offer was made at
10 the end of March 2002. JENSEN directed Employee One to sign the offer letter and date it as if the
11 offer had been made and accepted at the end of January 2002.

12 34. After Employee One accepted the new offer of employment at the end of March
13 2002, REYES and JENSEN prepared Committee meeting minutes for the Board of Directors dated
14 February 28, 2002 that included the new stock option grant of 500,000 shares to Employee One. The
15 Committee meeting minutes priced the stock option grant using the closing price of Brocade's stock
16 on February 28, 2002, which was \$21.97 per share and the lowest closing price for Brocade's stock
17 during the second quarter of 2002. REYES then signed the backdated Committee meeting minutes
18 approving the grant to Employee One. REYES and JENSEN also prepared a new version of the
19 November 28, 2001 Committee meeting minutes that omitted the earlier stock option grant to
20 Employee One. REYES then signed the new, backdated Committee meeting minutes for November
21 28, 2001 that omitted any reference to the Employee One stock option grant.

22 35. When an HR employee questioned JENSEN about the legality of Brocade's practice
23 of backdating an employee offer letter, JENSEN responded that she did not care and that HR did it
24 because that is what REYES wants.

25 I. False Statements To Brocade's Auditors And Others.

26 36. The backdated and altered Committee meeting minutes, employment offer letters, and
27 similar documents described above were provided to Brocade's finance department and outside
28 auditors. Brocade's finance department and outside auditors relied on the dates and prices entered on

1 those documents to prepare Brocade's books and records and its financial statements. Moreover,
2 because the documents were backdated and altered, Brocade's finance department and auditors did
3 not record compensation expenses for its stock option grants or otherwise disclose the true nature of
4 Brocade's stock option grants and stock option granting process.

5 37. The documents that I have reviewed and the witness statements indicate that REYES
6 and JENSEN knew that the backdated Committee meeting minutes and similar documents were
7 provided to Brocade's finance department and outside auditors. In addition, witnesses have stated
8 that they told REYES and JENSEN that Brocade would incur a compensation expense if it granted
9 in-the-money stock options, granted stock options to a non-employee, repriced an existing stock
10 option grant, or canceled an existing stock option grant and regranted the stock options with a more
11 favorable exercise price. One such witness from Brocade's finance department told REYES that he
12 could not backdate a stock option grant to an earlier date when Brocade's stock was trading at a lower
13 price, and that if he did so, Brocade would have to record a compensation charge. REYES and
14 JENSEN also told witnesses that Brocade did not want to incur compensation expenses in connection
15 with its stock option grants.

16 38. When interviewed by the attorneys representing Brocade's Audit Committee in early
17 2005, REYES admitted that he knew that in-the-money stock options have accounting implications.
18 However, REYES did not admit to the process that he used to price stock option grants that is
19 described above. Rather, he claimed that he actually approved and granted the options on the dates
20 reflected in the Committee meeting minutes and similar documents. REYES claimed that he never
21 picked a date for granting stock options after the fact. He claimed that he did not recall reviewing
22 historical closing prices for Brocade's stock when pricing stock options.

23 J. The Restatement.

24 39. In or about January 2005, the Audit Committee of Brocade's Board made a
25 preliminary determination that Brocade and its auditors could not rely on the accuracy of the
26 Committee meeting minutes signed by REYES. To calculate the stock-based compensation expenses
27 for its stock option grants using the "fixed" accounting method disclosed in its previous financial
28 statements, Brocade was required to determine the actual grant date for each stock option grant.

1 However, REYES's and JENSEN's backdating scheme prevented Brocade from determining the
2 dates when the stock option grants were actually made. Thus, Brocade could not calculate the
3 appropriate stock-based compensation expense using "fixed" accounting under APB 25.


4 40. Because REYES's and JENSEN's backdating scheme prevented Brocade from
5 determining the actual dates when REYES granted stock options, Brocade decided to restate its
6 financials to record stock-based compensation expenses using an alternate accounting method called
7 "variable" accounting under APB 25. Under "variable" accounting, the value of each stock option
8 grant is calculated at the end of each reporting period and results in either a compensation expense or
9 credit depending on whether the exercise price of the stock option grant is below or above the market
10 value of Brocade's stock.

11 41. On January 24, 2005, Brocade announced that the Audit Committee had completed
12 the internal investigation and that it would restate its financial statements with the following impact:
13 (1) net loss from the 2004 fiscal year increased from \$2 million to \$32 million; (2) net loss for the
14 fiscal year 2003 increased from \$136 million to \$147 million; (3) income from fiscal year 2002
15 increased by \$60 million to \$126 million; and (4) income for fiscal years 1999 through 2001 declined
16 by a total of \$304 million.

17 42. On May 16, 2005, Brocade announced that the Audit Committee had determined that
18 Brocade must extend the restatement of its financial statements to account for additional stock-based
19 compensation expenses for stock options granted from August 2003 through November 2004. The
20 additional charges resulted in a cumulative increase in stock-based compensation expenses of \$0.8
21 million over fiscal year 2003 and 2004.
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1 IV. CONCLUSION.

2 43. Based on the foregoing, I have concluded that there is probable cause to believe that
3 beginning in or about 2000, and continuing up to in or about 2004, REYES and JENSEN committed
4 securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code
5 of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.
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8 
9 JOSEPH SCHADLER

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11 Subscribed and sworn to before me this
12 20th day of July 2006.

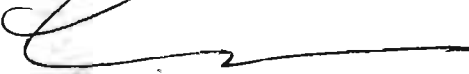
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14 EDWARD M. CHEN
15 United States Magistrate Judge
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EXHIBIT 1

COUNT ONE: 15 U.S.C. §§ 78j(b) and 78ff; 17 C.F.R. §240.10b-5, 18 U.S.C. § 2 (Fraud in Connection with Brocade Stock; Aiding, Abetting and Willfully Causing)

Beginning in or about 2000, and continuing up to in or about 2004, in the Northern District of California and elsewhere, the defendants

GREGORY L. REYES and
STEPHANIE JENSEN

did knowingly and willfully, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities issued by Brocade, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud as to a material matter; (b) making and causing Brocade to make untrue statements of material fact and omitting to state facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon purchasers of Brocade securities.

All in violation of Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

Maximum Penalties: 20 years in prison; \$5,000,000 fine, or if any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, a fine equal to twice the gross gain or twice the gross loss caused by the offense; 3 years supervised release; \$100 special assessment.

EXHIBIT 2

The elements of securities fraud are:

First, the defendant used a scheme to defraud someone or made or caused Brocade to make an untrue statement of a material fact or failed to disclose a material fact which resulted in making the statements Brocade made misleading;

Second, the defendant's acts or failure to disclose was in connection with the purchase or sale of Brocade stock;

Third, the defendant used the means and instrumentalities of interstate commerce, including the telephone, wires, or mails or the facilities of a national securities exchange in connection with these acts and omissions or with this failure to disclose, and;

Fourth, the defendant acted knowingly and willfully, that is, with intent to defraud buyers or sellers of securities.

To defraud someone means to make a statement or representation which is untrue and known to the defendant to be untrue, or to knowingly fail to state something which is necessary to make other statements true, and which statement or omission is material to the purchase or sale of stock or securities.

It is not necessary that the defendant made a profit or that anyone actually suffered a loss.

Information is "material" if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision, in other words, if a reasonable investor would find it significant in deciding whether to buy, sell, or hold Brocade securities.